IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1189 of 2003

IN

SPECIAL CIVIL APPLICATION No 1967 of 2003

WITH

CIVIL APPLICATION No 8130 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE J.N.BHATT
and
HON'BLE MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KALOL TALUKA PANCHAYAT

Versus

BHARATKUMAR J DAVE

Appearance:

1. LETTERS PATENT APPEAL No. 1189 of 2003

MR HS MUNSHAW for Appellant No.

MR PH PATHAK for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE J.N.BHATT
and
HON'BLE MR.JUSTICE K.A.PUJ

Date of decision: 19/03/2004

CAV JUDGEMENT

(Per : HON'BLE MR.JUSTICE K.A.PUJ)

Admit. At the joint request of the parties, the appeal is taken up for final hearing.

This Letters Patent Appeal is filed under Clause 15 of the Letters Patent Act against the order dated 21.07.2003 passed by the learned Single Judge (Coram :P.B. Majmudar, J.) in S.C.A. No. 1967 of 2003, dismissing the petition filed by the present appellant against the award passed by the Presiding Officer, Labour Court, Kalol in Reference (LCK) No. 97/1996 on 31.05.2002 reinstating the respondent workman with 70% of back wages.

2. It is the case of the appellant that respondent workman was appointed as workcharge clerk purely on temporary and adhoc basis for 29 days and he was provided work as and when the work was available and was paid wages accordingly. The respondent workman has never completed 240 days in any of the years and due to non-availability of the work, the respondent workman was discontinued from work.

3. Being aggrieved by the said decision of the appellant, the respondent workman has approached Labour Court by way of filing Reference being LCK No. 131/1988 and award was passed by the Labour Court on 26.11.1992 directing the present appellant to reinstate the respondent workman without back wages.

4. Being aggrieved by the said order of the Labour Court, the present appellant has filed S.C.A. No. 9152 of 1993 before this Court. Though the said petition was admitted by this Court, no stay was granted. During the pendency of the said petition and since the award of the Labour Court was not complied with by the present appellant, the present respondent workman has filed Contempt petition before this Court being M.C.A. No. 997/1993. This Court has passed an order on 12.03.1994 in the said application, pursuant to which the respondent workman was reinstated and he joined his duty on 16.03.1994.

5. Since the present appellant did not have any work, the respondent was discontinued from service on 13.04.1994 after observing all the legal formalities and after complying with the provisions contained in Section 25 (F) of the I.D. Act with regard to Notice pay, retrenchment compensation etc.

6. Being aggrieved by the said order, the respondent workman has again filed Reference being L.C.K. No. 97/1996 before the Labour Court, Kalol and the Labour Court, Kalol vide its award dated 31.05.2002 has partly allowed the said Reference directing the present appellant to reinstate the respondent workman in the service with 70% of back wages.

7. Being aggrieved by the said order of the Labour Court, the present appellant has filed S.C.A. No. 1967/03 before this Court and the learned Single Judge of this Court vide order dated 21.07.2003 dismissed the said petition and confirmed the award dated 31.05.2002 passed by the Labour Court.

8. It is this order of the learned Single Judge which is under challenge in the present appeal.

9. Mr. H.S. Munshaw, learned advocate appearing for the appellant has submitted that both the Labour Court and the learned Single Judge have failed to appreciate that the respondent was provided the work purely on temporary and adhoc basis depending on the work load and he was discontinued from service vide order dated 13.04.1994 after following due procedure laid down under Section 25 F & 25 G of the I.D. Act. Mr. Munshaw has further submitted that both the Labour Court as well as learned Single Judge have further erred in observing that there was a breach of mandatory provisions of Rule 81 of the I.D. (Gujarat) Rules, 1966 and that the seniority list was not published and hence the respondent workman was entitled to reinstatement in service with 70% of back wages. There was nothing on record to establish that the Juniors of the respondent workman were continued and the provisions of Section 25 G were violated. The respondent workman was junior most and, therefore, he was required to be retrenched and there was no requirement of publishing the seniority list. In absence of any work, the respondent workman could not be reinstated in service with 70% back wages which would be a burden to the public exchequer.

10. Mr. Munshaw has further submitted that so far as the earlier proceedings are concerned, the Labour Court

has not awarded any back wages and even when the order of reinstatement was challenged before this Court in S.C.A. No. 9152/1993, though the petition was admitted in 1993, because of the elevation of the petitioner's advocate as Judge of this Court and though the fresh notice was issued on the petitioner - present appellant, the petitioner could not remain present and the order was passed in absence of the petitioner. Even in that order, the Court has observed that before effecting retrenchment of the respondent workman, the petitioner had not complied with the provisions of Section 25-F of the I.D. Act and in that view of the matter, the direction given by the Labour Court to the petitioner - present appellant to reinstate the respondent workman in service without back wages could hardly be regarded as illegal so as to warrant the interference of this Court in the petition filed under Article 227 of the Constitution of India. In that order, a statement was made on behalf of respondent workman that after reinstatement of the workman pursuant to the order of the Labour Court, the respondent workman was again discharged from service and award was passed by the Labour Court on 31.05.2002 in Reference (L.C.K.) No. 97/96 directing the appellant to reinstate the respondent workman in service with 70% of back wages and that the said order has not been challenged by the present appellant. However, the present appellant has already filed the present L.P.A. before this Court way back in October, 2002. He has further submitted that because the present appellant could not remain present before this Court in earlier proceedings, the proper facts could not have been placed. In absence of any work with the present appellant, the respondent was discharged from service after following the requisite procedure and complying with the required statutory obligation. The Labour Court should not have passed the order of reinstatement with 70% back wages and the said award of the Labour Court should not have been confirmed by the learned Single Judge of this Court. He has further submitted that both the orders should be quashed and set aside and the present appeal be allowed.

11. Mr. P.H. Pathak, learned advocate appearing for the respondent has strongly submitted that present L.P.A. is not maintainable as it is filed against the order passed by the learned Single Judge of this Court under Article 227 of the Constitution of India. He has further submitted that against concurrent finding of the Labour Court as well as the learned Single Judge, the appellate Court should not interfere in the matter. The appellant has not complied with the provisions of the Act as the present respondent was discharged despite the fact that

he was not the junior most in the appellant organisation. The present appellant has not followed the general seniority list to be maintained by the District Panchayat. The juniors to the respondent were continued in service and at present they are working with the appellant. Rule 81 of the Industrial Dispute (Gujarat) Rules is mandatory rule and any breach of the said rule i.e. non-publication of seniority list before one week of retrenchment is held to be illegal. He has relied on the decision of the Bombay High Court in the case of NAVBHARAT HINDI DAILY, NAGPUR V/S. NAVBHARAT SHRAMIK SANGHA AND ANOTHER, 1984 LAB.I.C. 445 wherein it is held that " Rule 81 of Industrial Disutes (Bombay) Rules framed under the Act deals with the maintainance of seniority list of workman. It says that the employer shall prepare a list of workmen in the particular category from which respondent is contemplated, arranged according to the seniority of their service in that category, and cause a copy thereof to be possted on the notice board in a conspicuous place in the premises of the industrial establishment at least seven days before the actual date of retrenchment. The Court has further stated that it is an accepted principle of industrial law that in ordering retrenchment, ordinarily the management should commence with the latest record and progressively retrench employees higher up in the list of seniority. In order to achieve this principle, the seniority list has to be prepared by an employer in accordance with Rule 81 of the Rules. The intention behind exhibiting such a list is to allow workmen to object to the same and thereby avoid hardship which may result as a consequence of retrenchment. The list to be exhibited in accordance with the rule obviously is for the reason to protect the interest of workman. It further provides the safeguard against contravention of the rule of "last come first go", which is ordinarily required to be followed. The Court has, therefore, held that in these circumstances, it can never be said that the rule does not cast any obligation on the employer to strictly follow the said rule. In the case before the Bombay High Court, no such list was exhibited by the petitioner and, therefore, the Industrial Tribunal was right in coming to the conclusion that the petitioner had contravened Rule 81 of the Bombay Rules framed under the Act."

12. Mr. Pathak has further relied on the decision of the GAFFAR AND OTHERS V/S. UNION OF INDIA AND OTHERS, 1983 (2) L.L.J. 285 wherein it is held that "The Provision has been included in the Rules so that the object of Section 25 of the I.D. Act may be effectively achieved. The Industrial rule relating to retrenchment

of "last cum, first go" where other things are equal has been recognised for long and affords a healthy safeguard against discrimination. This principle was given statutory recognition by amendment of the Act in 1953. The rule 77 was framed with a view to facilitate a retrenched workman to verify that he is not being discriminated against, otherwise it may be impracticable for him to collect relevant information and enforce his right. The minimum time of 7 days allowed for this purpose is not unnecessarily long, for the workman who get an adequate opportunity to scrutinise the correctness of the seniority list before he is thrown out. Viewed from this angle it should be held that the requirement mentioned in Rule 77 is mandatory and its violation renders an order of retrenchment illegal."

13. Mr. Pathak has further relied on the decision of the Hon'ble Supreme Court in the case of SAMISHTA DUBE V/S. CITY BOARD, ETAWAH AND ANOTHER, AIR 1999 S.C. 1056 wherein the Hon'ble Supreme Court has held that " Rule of last come, first go applies even to a daily-wager. While interpreting Section 6-P of U.P. Industrial Disputes Act, the Hon'ble Supreme Court has held that the said rule does not require any particular period of continuous service as required by S. 6-N."

14. Mr. Pathak has further submitted that the appointment of the respondent was made as workcharge clerk by the Executive Engineer of District Panchayat and was allotted to Taluka Panchayat. The cadre of workcharge clerk is a district level cadre and they are transferred from one place to another. The persons appointed after the respondent were continued in service and, hence, appellant has violated the principles of last cum first go. In view of the above facts, he has submitted that appeal does not deserve any interference by this Court and it is to be straightway dismissed.

15. On the basis of above submissions and authorities relied upon by Mr. Pathak, he has urged that both the Labour Court as well as the learned Single Judge of this Court have taken correct decision in the matter and no case was made out by the appellant warranting any interference by this Court, in exercise of appellate powers under Clause 15 of the Letters Patent Act and hence the present appeal deserves to be dismissed with cost.

16. We have dispassionately heard the learned advocates appearing for the respective parties. We have gone through the orders passed by the Labour Court and

the learned Single Judge of this Court. We have also minutely examined the text, tenor and texture of the relevant papers and documents produced before us. We are also conscious of the fact that this is the second round of litigation and orders passed in earlier round of litigation were also considered by us. In this back drop, certain undisputed facts which emerge are :-

(i) The respondent workman was employed as work-charge employee on 17.01.1984 and his services were orally terminated on 31.03.1987, without complying with the Provisions of S. 25-F of the Industrial Disputes Act ?

(ii) In a dispute having been raised by the respondent workman by way of Reference (LCK) No. 131 of 1988, the Labour Court, Kalol vide its award dated 26.11.1992 directed reinstatement without back wages.

(iii) The said award has been confirmed by this Court by an order and judgment dated 13.01.2003 in S.C.A. No. 9152 of 1993, mainly on the ground that before effecting retrenchment of the respondent workman, the petitioner employer has not complied with the Provisions of Section 25-F of the Industrial Disputes Act ?

(iv) During the pendency of S.C.A. No. 9152 of 1993 and since there being no stay against the implementation and execution of the award dated 26.11.1992, in due compliance with it, the respondent workman was reinstated with effect from 11.03.1994, as work-charge clerk. However, in absence of any work, the respondent workman was again discharged by an Office order dated 11.04.1994, after calculating and paying the retrenchment compensation for 5-1/2 months, one month's notice pay and current month's salary, amounting to Rs. 13,629/-.

(v) The respondent workman has received the retrenchment compensation and notice pay as well as current month's salary and thereafter dispute was raised by way of Reference (LCK) No. 97/96 which was decided on 31.05.2002 awarding reinstatement with 70% of back wages.

17. In this second round of litigation, the main grievance raised by the respondent was that the appellant employer has not complied with the provisions of S. 25

(N) & (G) as well as other statutory provisions of the Industrial Disputes Act and hence the termination order was bad and not sustainable at law. Though this was weighed with the Labour Court and the learned Single Judge of this Court, we, however, with all due respect, did not endorse the said view. The authorities relied upon by Mr. Pathak are also not advancing the case of the respondent workman any further. In the case on hand, the respondent workman was initially appointed as work-charge clerk. For want of work, the respondent workman was discharged from service and though he was ordered to be reinstated, no back wages were awarded by the Labour Court, nor the matter was taken further to this Court by the respondent workman. On second occasion, the respondent workman was discharged from service after complying with the provisions of Section 25-F and after making payment of retrenchment compensation, notice pay etc. The amount was duly received by the respondent workman and thereafter the dispute was raised by him. It is the case of the appellants that there was no work and looking to their financial position, it was not possible for them to retain the respondent workman without any work and to pay idle wages. It was also denied by them that any junior to the respondent workman was retained in the service. As a matter of fact, the respondent workman was the only person in that cadre and hence there was no question of preparing the seniority list or placing it on the Notice Board.

18. Even otherwise, the Division Bench of this Court in the case of HALVAD NAGARPALIKA AND OTHERS V/S. JANI DIPAKBHAI CHANDRAVADANBHAI AND OTHERS in L.P.A. No. 1202 of 2002 and other allied matters decided on 08.05.2003, was at pains to observe that the Panchayats, Nagarpalikas, Municipalities and/or Govt. Corporations as well as Govt. Establishments are facing severe financial crisis only because of overheads as persons are being appointed for the time being, but to make them permanent would definitely affect adversely to the financial substratum of the respective organisation.

19. In view of the above facts and circumstances of the case, the award passed by the Labour Court reinstating the respondent workman with 70% back wages and confirmed as such by the learned Single Judge of this Court, calls for an interference in this appeal. Earlier, the respondent workman was reinstated without back wages. Subsequently, in second round of litigation, he was ordered to be reinstated with 70% back wages. However, in absence of any work and after due compliance

with the Provisions of Section 25-F of the Act and no junior to the respondent workman having been retained in the service by the appellants, the order of reinstatement with 70% back wages does not seem to be just and proper. Even otherwise, considering the fact that the respondent workman has not been in employment of the appellants for well over the period of 17 years, barring one month, we do not think it appropriate to put him back in service of the appellant. It would be proper that some reasonable compensation be paid to him in lieu of back wages and reinstatement. We accept the proposal of Mr. Munshaw, learned advocate appearing for the appellants, to pay lump sum amount of Rs. 50,000/- in lieu of back wages and reinstatement. The course which we are adopting here finds support from the decisions of Hon'ble Supreme Court in the case of SAIN STEEL PRODUCTS V/S. NAIPAL SINGH AND OTHERS, AIR 2001 S.C. 2401 and SHRIRAM REFRIGERATION INDUSTRIES V/S. INDUSTRIAL TRIBUNAL HAYDERABAD AND OTHERS (2002) 9 S.C.C. 708. We, therefore, direct the appellant to pay an amount of Rs. 50,000/- to the respondent workman or deposit the said amount with the Labour Court, Kalol within three months from today. If the amount is deposited in the Labour Court, the respondent workman is hereby permitted to withdraw the said amount.

20. In view of our above decision, the award of the Labour Court as affirmed by the learned Single Judge of this Court stand modified to the above extent. The appeal is accordingly allowed in part.

21. In view of the order passed in appeal, Civil Application No. 8130 of 2003 does not survive and hence, it is accordingly disposed of.

[J.N. BHATT, J.]

[K.A. PUJ, J.]

#Savariya#

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